



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF REVENUE

TITLE: CONTINGENCY FEE CONTRACT

CASE ID: 2018-04-0103

DATE: April 4, 2018

After examination and review, Inspector General Chief Legal Counsel Tiffany Mulligan reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code § 4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics set forth in Ind. Code 4-2-6 and 42 IAC 1-5 (Code of Ethics) or any statute or agency rule concerning conflicts of interests.

On April 3, 2018, the Indiana Department of Revenue (DOR) notified the IG that it wished to enter into a contingency fee contract with Mattingly Burke Cohen & Biederman LLP, an Indianapolis based law firm (the Firm). DOR has requested representation by the Firm in connection with a Tax Court case entitled *Tell City Boatworks v. Indiana Department of Revenue* (the Case). The State will compensate the Firm through a contingency fee in the amount of 15%

of any amount recovered. The Firm will also charge the State a reduced hourly rate of \$225 an hour, as opposed to their normal hourly rate of \$365 an hour.

Pursuant to Ind. Code § 4-6-3-2.5(b), DOR is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. DOR must consider five factors when making this determination as outlined by Ind. Code § 4-6-3-2.5(c). DOR made such a determination and considered all of the factors outlined in the statute.

DOR's determination explains that the Case will require experienced litigators, extensive discovery, development of complicated expert testimony, the preparation of lengthy dispositive motions, and possibly a trial. It also explains that the Case will present the Tax Court with complex issues of first impression regarding DOR's interpretation of Indiana's research expense credit. DOR anticipates that the Case will affect many other current and future DOR cases. The Tax Court sits in Indianapolis, and the vast majority of witnesses and documents are located in Marion County or in Tell City, Indiana. DOR determined that the Firm meets its needs for experienced litigators to represent DOR in the Case.

Furthermore, Ind. Code § 4-6-3-2.5(d) requires an agency to request proposals from private attorneys wishing to provide services on a contingency fee basis unless the agency, in this case DOR, determines in writing that requesting proposals is not feasible under the circumstance. DOR did not request proposals from private attorneys wishing to provide services on a contingency basis; however, they conducted a search of Marion County litigators before selecting the Firm. DOR's determination explains that requesting such proposals was not feasible under the circumstances due to DOR's unique needs and the unique nature of the Case.

After careful examination and review, the IG has determined that the contract will not

violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. According to DOR, no employee of DOR has any ownership interest in the Firm, nor do any of the DOR personnel involved in any of the contracting decisions work for or have any relatives working at the Firm. Because of that, it does not appear that any DOR employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, we find that entering into the contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interest. This Report is issued in compliance with the above noted statutory requirements.

Dated: April 4, 2018.

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General